

The 9th March, 1995

No. 14/13/87-6Lab./327.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Registrar, Maharishi Dayanand University, Rohtak *versus* Virender Singh.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, ROHTAK

Reference No. 152/1993

between

SHRI VIRENDER SINGH, S/O SHRI SAHAJ RAM, VILLAGE BAHUAKABARPUR, TEHSIL AND DISTRICT ROHTAK .. *Workman.*

and

M/S REGISTRAR, MAHARISHI DAYANAND UNIVERSITY, ROHTAK, .. *Management.*

Present :

Shri O. P. Chahal, Authorised Representative, for the workman.

Shri M. C. Bhardwaj Authorised Representative, for the management.

AWARD

In exercise of powers conferred by sub clause (c) of sub-section(1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute between the parties, named above, to this Court for adjudication, —*vide* Labour Department Endorsement No. OV/Rohtak/186-3/27975, dated 30th July, 1993 :—

Whether the termination of services of Shri Virender Singh is justified and in order? If not, to what relief he is entitled?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was on the post of helper peon on daily wages,—*vide* letter No.EN2/89/14086, dated 5th September, 1989 and granted extension in service,—*vide* Endorsement No. Estt./89/24948-76, dated 12th December, 1989 and Endorsement No. Bsst. 89/285—305, dated 6th January, 1990 and served the university with sincerity and obediently with utmost care and getting good remarks from his superiors. The petitioner was again given the opportunity of serving the university on his previous good performance of duty,—*vide* letter No. EN-2/91/8950, dated 12th April, 1991. The appointment was on *ad hoc* basis for and he was allowed to join the duty after submission of the medical certificate of fitness from the Chief Medical Officer, Civil Hospital, Rohtak. The applicant joined the service of the university on the post of peon after completing all the requisite formalities of service and serving the university from that period to onward with no adverse remarks and with care or an caution to the satisfaction of the superiors, and the petitioner was further granted extension in service,—*vide* letter No. EN-90/28785, dated 28th October, 1991 and thus acquire the status of regularisation of the services because he has completed more than 240 days of service. The defendants have interviewed the applicant on 12th March, 1992 for the post of peon with other candidates, who have also applied for the advertised post of peon but the petitioner have been ignored in appointing him on the post of peon and was terminated in the services. Which is illegal wrong and against the rule of natural of the workman was exemplary. The establishment department is still functioning where the petitioner was working on the post of peon and the respondent have recruited the new comers for the same post without giving any opportunity of hearing to the petitioner. The petitioner has requested the defedant of 16th March, 1992 to regularise the service of the petitioner but no heed is paid to him. Hence the claim statement was filed that the respondent to reinstate the applicant in service with retrospective effects with all kind of service benefits as admissible to regular employees of the university.

3. The management appeared filed the written statement that the M.D. University is a statutory body constituted under M. D. U. Act. The petitioner has not come with clean hands, he has suppressed the material facts. He has no mentioned in the petitioner that civil suit on the same alleged cause of action was filed by the petitioner. But the same was withdrawn as the same was very likely to be dismissed being devoid of merits. The present claim statement is barred by the principle of *res judicata*. The termination of services of the applicant does not amount to retrenchment interview of section 2(oo) (bb). The applicant was appointed as peon on *ad hoc* basis for the period of six months or till regular incumbent joins whichever is earlier,—*vide* letter No. EN-7/91/8950, dated 12th April, 1991. As a stop gap arrangement, he joined

his duties on 15th April, 1991. On the same terms and conditions as mentioned in his initial appointment letter same can be terminated at any time without any notice. The applicant was estopped by his own act and conduct. He admitted that applicant was appointed on the post of helper and he was removed in accordance of law. The applicant appeared in the test before the selection committee for his selection but he was not found fit by the selection committee. The action of the university is legal, just fair in accordance with the rules of natural justice and service rules and is not discriminatory in any way. Hence the claim statement is liable to be dismissed with costs.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per term of reference?
- (2) Relief?

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1:

6. The workman has come into witness box as WW-4 and also examined Shri Bhanwar Singh, Assistant as WW-2 and closed the evidence. The management has examined Shri Bhanwar Singh, Assistant as MW-1 and closed the evidence.

7. Shri Bhanwar Singh Assistant admitted that applicant was appointed (the photo copy of the order which is Ex. M-1) for six months on *ad hoc* basis and there after he was given extension,—*vide* order Ex. M-2,—*vide* Ex. M-3 he was removed from the job. The applicant had interviewed but he was not selected. Thereafter he was not in the service of the M.D.U. Bhanwar Singh admitted that the applicant had experience to serve as peon and peons were recruited. He also admitted that there was no complaint etc. against the applicant.

8. WW-2 Bhanwar Singh admitted that applicant was appointed as Helper and he worked upto 30th April, 1990,—*vide* Ex. P.A. He worked upto 12th April, 1991,—*vide* Ex. P-5. He also made the statement that he was appointed after giving one day break. He also admitted that applicant had remained on job upto 16th March, 1990 which is proved from,—*vide* Ex. P.C. He also made the statement that he was appointed after having submitted medical certificate. He also made the statement that he cannot say whether the applicant was called for interview or not, there is nothing in file to show that he was called for interview. He also admitted that he was given appointment letter that he shall be continuous till regular selection is not made.

9. The applicant has made the statement that he was appointed as helper in the year 1979 and he worked upto 1992. In 1991 his term as helper was extended and his appointment was made after produced the medical certificate from Chief Medical Officer, Rohtak.

10. The learned Authorised Representative for the management made the submission that the case of the applicant is covered under section 2(oo) (bb) of the Industrial Disputes Act as he was serving the department on contract basis. It is true that he was serving on the contract basis and after expiry of contract he could not claim the relief under the Industrial Disputes Act. The appointment of the applicant,—*vide* Ex. P-A is to the effect that he was appointed as helper on daily wages basis at the rate of 25 per day with immediate effect. Ex. P-C is the order issued by the respondent regarding extension in *ad hoc* appointment and he was given extension in his *ad hoc* appointment after giving one day break for a period of six months or till regular selection is made, whichever ever is earlier, on the same terms and conditions as mentioned in your initial appointment letter Ex. P-5 is the appointment letter of the applicant that his appointment has been made in the Ex. P-8 is purely on *ad hoc* for six months or till permanent regular selection is made, whichever ever is earlier.

11. Ex. PD is the letter issued by the respondent to the applicant for recruitment to the post of peon and he was directed to appear before the selection committee for interview on 12th March, 1992 at 10.00 A. M. in the Sports Stadium, M.D. University, Rohtak for the recruitment of the post of peon.

12. The learned Authorised Representative for the management thus, made submission as the appointment of the applicant was for six months and it is given that in case of regular employment he shall be deemed out of service. For this submission the reliance was placed on *Sat Pal versus The Associates Vice President Human Resources Swaraj Foundry Division, Majri and Ors.* cited in 1990 (5) SLR, 694, holding that termination of services during the period of probation for unsatisfactory work and conduct—falls within the exception provided under clause (bb) of section 2(oo) of the Act, section 25-F not attracted. It was also held in case 1992 Lab. I. C. 1813 in case between Chakradhar Tripathy and state of Orissa and

others, holding that appointment made under contract for specified term pending regular recruitment—services terminated after regular recruitment. Is not retrenchment in view of section 2 (oo) (bb)-S. 25-F not attracted. The facts of the referred case are that the petitioner was appointed considering the urgency of vacancy in the post of Junior Assistant by the orders of Secretary of the Management as an *ad hoc* employee on 10th April, 1985 for 89 days, which period was extended from time to time with short breaks on the request of the employees on the basis of fresh applications till 13th April, 1987. The management recruited its regular candidates through recruitment test (both written and *viva voce*) and interview in which the petitioner seems to have participated but someone else who received highest marks was given regular appointment as Junior Assistant and the services of the petitioner was discontinued. It is held by the Hon'ble High Court that I would like to emphasise that the the Courts would remove the veil in such cases and see the reality of the matter. This exercise would be nothing new, and hence not difficult, for Courts dealing with cases of termination, as they are called upon on very many occasions to see if any order of termination is one of discharge simpliciter or has been inflicted.

The reliance was also made to the reference between Haryana Board of School Education and Industrial Tribunal, Hissar, cited in 1984 (1) LLJ, 1123. Since the workman was appointed simply as Helper/Peon and he was not working on specific job or taking a job as presumed was appointed for specific period. Since the workman was posted as Helper/Peon. He does not convince me that his appointment had taken place for specific period. Then he was appointed for 89 days for three times, as such I am of the view that it had lost the confidence of the Court that workman was appointed on specific job and his case not covered under Section 2(oo) (bb) of the Industrial Disputes Act. The reference to made to 1993 (ii) CIR, 509 in case Jay Bharat Printers *versus* Labour Court, holding that Industrial Disputes Act—Held taking into account the nature of the appointment made in the instant case and the gaps in between it must be held that view taken by the Labour Court that this is not a case coming within the perview of section 2(oo)(bb) is reasonable and correct.

14. The learned Authorised Representative for the workman has brought to my notice case law cited in 1990 (1) RSJ 255, Bhagwati Parsad Delhi State Mineral Development Corporation and Smt. Bhagwati Devi and others *versus* Delhi State Mineral Development Corporation (full bench) holding that one appointed as daily rated workers working for last three years. Not possessing requisite qualifications to hold post as entitle them to be confirmed. Practical Experience would always aid the person to effectively discharge duties and is a sure guide to assess suitability. (It is case of confirmation and not the case of retrenchment).

15. As I have come to the conclusion that as the workman had served the department for more than 240 days in a year and I have held the provisions contained in Section 2 (oo) (bb) of the Industrial Disputes Act are not applicable to the case of the applicant and the management has not given him notice, notice pay or retrenchment compensation and thus not complied with Section 25-F of the Industrial Disputes Act. In view of my findings concluded above I find that reference petition filed by the workman is tenable and I decide this issue in favour of the workman and against the management.

Issue No. 2 (Relief) :

16. In view of my findings on the above issues I accept the reference petition and claim statement filed by the workman is tenable and I hold the workman is entitled to be reinstated with continuity of service but with 50% (FIFTY) of back wages. The reference is answered and returned accordingly. The parties are left to bear their own costs.

The 1st February, 1995.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. ref. 152-93/228, dated the 9th February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.